

Cite as 2024 Ark. App. 338

# ARKANSAS COURT OF APPEALS

DIVISION II

No. CV-22-230

SANDRA D. MCCLELLAN AND  
MONTA R. MCCLELLAN, HUSBAND  
AND WIFE; MONICA J. NEWSOM;  
AND JOHN MILAM CONSTRUCTION,  
INC., INDIVIDUALLY AND ON  
BEHALF OF ALL OTHERS SIMILARLY  
SITUATED

APPELLANTS

V.

RITTER CABLE COMPANY, LLC; E.  
RITTER & COMPANY; E. RITTER  
COMMUNICATIONS, LLC; E. RITTER  
COMMUNICATIONS HOLDINGS,  
LLC; AND E. RITTER TELEPHONE  
COMPANY, LLC

APPELLEES

Opinion Delivered May 22, 2024

APPEAL FROM THE FRANKLIN  
COUNTY CIRCUIT COURT,  
NORTHERN DISTRICT  
[NO. 24OCV-21-73 ]

HONORABLE DENNIS CHARLES  
SUTTERFIELD, JUDGE

AFFIRMED

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**WAYMOND M. BROWN, Judge**

This appeal arises from an order of the Franklin County Circuit Court dismissing a class-action complaint filed by Sandra D. McClellan and Monta McClellan, husband and wife; Monica Newsom; and John Milam Construction, Inc. (collectively the “landowners”), individually and on behalf of all others similarly situated, against Ritter Cable Company,

LLC; E. Ritter & Company; E. Ritter Communications, LLC; E. Ritter Communications Holdings, LLC; and E. Ritter Telephone Company, LLC (collectively “Ritter”), in an action involving the installation of fiber-optic cable and other telecommunications equipment in state highway rights-of-way adjacent to lands owned by the landowners. The complaint asserted claims of trespass and unjust enrichment and sought a declaratory judgment, damages, and injunctive relief, including removal of Ritter’s cable and equipment. The claims alleged that, pursuant to highway-utility permits issued by the Arkansas Department of Transportation (“ArDOT”), Ritter had entered on the adjoining highway rights-of-way “without legal authority, to install and maintain telecommunication cable systems” and without paying compensation for additional easements through the landowners’ lands.<sup>1</sup>

Ritter moved to dismiss the landowners’ complaint pursuant to Arkansas Rule of Civil Procedure 12(b)(6). Following a hearing, the circuit court granted Ritter’s motions and dismissed the complaint, finding it “insufficient on its face.” The circuit court’s dismissal order was based on several grounds, including (1) failure to state facts supporting a claim that Ritter’s intrusion on the property was unlawful or unauthorized; (2) failure to state facts supporting a claim for damages; (3) failure to attach a copy of any written instrument or document constituting the easements, ArDOT’s highway rights-of-way, or other property interests at issue as required by Arkansas Rule of Civil Procedure 10(d); (4) failure to

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<sup>1</sup>The action was filed by the landowners individually and on behalf of a proposed class of “all Arkansas landowners who currently own land on which the Defendants have installed their telecommunications systems, pursuant to a Permit provided by ArDOT.”

“specifically plead the dates on which” the alleged misconduct occurred; (5) failure to “identify a single act committed by E. Ritter & Co.”; (6) failure to allege specific facts supporting the separate corporate defendants’ collective liability; and (7) nonjoinder of an indispensable party (ArDOT) pursuant to Arkansas Rule of Civil Procedure 19(a).

On appeal, the landowners challenge four of the grounds for the circuit court’s dismissal order. Specifically, they argue that (1) Arkansas Code Annotated section 27-67-304(b)<sup>2</sup> does not authorize the installation of telecommunications equipment within ArDOT’s highway rights-of-way; (2) the circuit court erred by requiring the landowners to allege facts disproving Ritter’s statute-of-limitations defense; (3) the complaint sufficiently alleged the corporate defendants’ collective liability doing business as “Ritter Communications”; and (4) the circuit court erred by dismissing the complaint for failure to join ArDOT as an indispensable party. Because the landowners challenge only four of the seven independent grounds supporting the circuit court’s order, we summarily affirm.

When, as here, the circuit court bases its decision on two or more independent grounds and the appellant challenges fewer than all the grounds, we will affirm without addressing any of the grounds.<sup>3</sup> The landowners do not challenge at least one of three additional grounds stated in the circuit court’s dismissal order: (1) the complaint failed to state facts supporting a claim for damages; (2) the complaint did not include a copy of any

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<sup>2</sup>(Repl. 2022).

<sup>3</sup>*Pennington v. Ark. Game & Fish Comm’n*, 2020 Ark. App. 573, at 5.

written instrument or document constituting the easements, ArDOT's highway rights-of-way, or other property interests at issue as required by Arkansas Rule of Civil Procedure 10(d);<sup>4</sup> and (3) the complaint failed to state facts identifying a single act committed by E. Ritter & Company. Therefore, because the landowners have failed to challenge all independent grounds supporting the circuit court's order, we must summarily affirm without addressing the merits of their appeal.

Affirmed.

BARRETT and THYER, JJ., agree.

*Lonnie C. Turner*; and *Hardin, Jesson & Terry, PLC*, by: *Rex M. Terry*, for appellants.

*Wright, Lindsey & Jennings LLP*, by: *Michael D. Barnes* and *Gary D. Marts, Jr.*, for appellees.

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<sup>4</sup>As to the circuit court's finding regarding the failure to include copies of pertinent documents as required by Rule 10(d), we note that buried in a footnote in the landowners' opening brief under their second point on appeal (involving Ritter's statute-of-limitations affirmative defense), the landowners mention this finding by the circuit court, calling it "nonsense, because a person claiming an easement—in this case, Ritter,—has the burden of proving the existence of the easement." To the extent that this comment can be construed as raising a challenge to this ground on appeal, it has no bearing on our disposition because the landowners leave unchallenged at least one other independent ground supporting the circuit court's dismissal order.